

and the measurement necessary to remove the PHA's designation as troubled or substandard status.

(2) *Expiration of two-year recovery period.* Upon the expiration of the two-year period beginning on the later of the date on which the PHA receives initial notice of troubled designation (including notice of substandard status) or October 21, 1998, the PHA shall improve its performance and achieve an overall PHAS score of at least 60 percent, and achieve a score of at least 60 percent of the total points available under each of PHAS Indicators #1, #2 and #3.

(e) *Parties to the MOA.* An MOA shall be executed by:

(1) The PHA Board Chairperson (supported by a Board resolution), or a receiver (pursuant to a court ordered receivership agreement, if applicable) or other AME acting in lieu of the PHA Board;

(2) The PHA Executive Director, or a designated receiver (pursuant to a court ordered receivership agreement, if applicable) or other AME-designated Chief Executive Officer;

(3) The Director of the area TARC; and

(4) The appointing authorities of the Board of Commissioners, unless exempted by the TARC.

(f) *Involvement of resident leadership in the MOA.* HUD encourages the inclusion of the resident leadership in the execution of the MOA.

(g) *Failure to execute MOA or make substantial improvement under MOA.* (1) If a troubled PHA fails or refuses to execute a MOA within the period provided in paragraph (b) of this section, or a troubled PHA operating under an executed MOA does not show a substantial improvement, as provided in paragraph (d) of this section, toward a passing PHAS score following the issuance of the failing PHAS score by REAC, the TARC shall refer the PHA to the DEC in accordance with § 902.77, and the DEC shall take the actions required by § 902.77(a)(2).

(2) For purposes of this paragraph (g), *substantial improvement* is defined as the improvement required by paragraphs (d)(1) and (d)(2) of this section. The maximum period of time for remaining in troubled status before being referred

to the DEC is two years. Therefore, the PHA must make substantial improvement in each year of this two year period.

(3) The following example illustrates the provisions of paragraph (g)(1) of this section:

EXAMPLE: A PHA receives a score of 50 percent; 60 percent is a passing score. The PHA is referred to the TARC. Within one year after the score is issued to the PHA, the PHA must achieve a 55 (50% of the points necessary to achieve a passing score of 60 points) to continue recovery efforts in the TARC. In the second year, the PHA must achieve a minimum score of 60 points (a passing score). If in the first year, the PHA fails to achieve the five-point increase, the PHA will be referred to the DEC. If in the first year, the PHA achieves the five-point increase but fails to achieve a passing score in the second year, the PHA will be referred to the DEC. The maximum period of time for remaining in troubled status before being referred to the DEC is two years.

(h) *Audit review.* For a PHA designated as troubled, REAC will perform an audit review and may, at its discretion, select the audit firm that will perform the audit of the PHA and REAC may, at its discretion, serve as the audit committee for the audit in question.

(i) *Continuation of services to residents.* To the extent feasible, while a PHA is under a referral to a TARC, all services to residents will continue uninterrupted.

§ 902.77 Referral to the Departmental Enforcement Center (DEC).

(a) *Referral of Troubled PHA to the DEC for failing to execute or meet MOA requirements.* (1) Failure of a troubled PHA to execute or meet the requirements of a MOA in accordance with § 902.75 constitutes a substantial default under § 902.79 and may result in referral of the PHA to the DEC. The TARC will recommend to the Assistant Secretary for Public and Indian Housing that a troubled performer PHA be declared in substantial default. In accordance with § 902.69, the Assistant Secretary shall notify the PHA of the default and allow the PHA an opportunity to cure the default. A PHA shall be referred to the DEC if the PHA fails to cure the default within the a period

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not to exceed 30 days unless the Assistant Secretary for Public and Indian Housing determines that a longer period is appropriate.

(2) *Actions of the DEC.* The DEC shall initiate:

(i) The judicial appointment of a receiver, or

(ii) An administrative receivership at HUD's option but only:

(A) With respect to PHAs with fewer than 1250 units, or

(B) While HUD's petition for judicial receivership is pending; and

(iii) Upon the recommendation of the Assistant Secretary for Public and Indian Housing, the interventions provided in § 902.83, and may initiate such other sanctions available to HUD, including, limited denial of participation, suspension, debarment, and referral to the appropriate Federal government agencies or offices for the imposition of civil or criminal sanctions.

(b) *Referral of PHAs in Substantial Default to the DEC.* A PHA that is not designated as troubled but that has been found to be in substantial default under the provisions of § 902.79 shall also be referred to the DEC. The Assistant Secretary for Public and Indian Housing makes the determination that a PHA is in substantial default. In accordance with § 902.79, the Assistant Secretary shall notify the PHA of the default and allow the PHA an opportunity to cure the default. If the PHA fails to cure the default within the specified period time, the PHA shall be referred to the DEC. The DEC shall initiate the judicial appointment of a receiver or the interventions provided in § 902.83 as recommended by the Assistant Secretary for Public and Indian Housing and may initiate such other sanctions available to HUD, including, limited denial of participation, suspension, debarment, and referral to the appropriate Federal government agencies or offices for the imposition of civil or criminal sanctions.

(c) *Receivership/Possession of PHA by HUD.* (1) If a judicial receiver is appointed, the receiver, in addition to the powers provided by the court, shall have available the powers provided by section 6(j)(3)(C) of the Act (42 U.S.C. 1437d(j)(3)(C)).

(2) If HUD assumes responsibility for all or part of the PHA, the Secretary of HUD shall have available the powers provided by section 6(j)(3)(D) of the Act (42 U.S.C. 1437d(j)(3)(D)).

(3) If an administrative receiver is appointed, the Secretary may delegate to the administrative receiver any of the powers provided to the Secretary as described in paragraph (e)(2) of this section, in accordance with section 6(j)(3)(D).

(4) The appointments of receivers, the actions of receivers, and HUD's responsibilities toward the receivers are governed by the provisions of section 6(j)(3).

(d) To the extent feasible, while a PHA is under a referral to the DEC, all services to residents will continue uninterrupted.

§ 902.79 Substantial default.

(a) *Events or conditions that constitute substantial default.* The following events or conditions shall constitute substantial default.

(1) HUD may determine that events have occurred or that conditions exist that constitute a substantial default if a PHA is determined to be in violation of Federal statutes, including but not limited to, the Act, or in violation of regulations implementing such statutory requirements, whether or not such violations would constitute a substantial breach or default under provisions of the relevant ACC.

(2) HUD may determine that a PHA's failure to satisfy the terms of a memorandum of agreement entered into in accordance with § 902.75, or to make reasonable progress to execute or meet requirements included in a memorandum of agreement, are events or conditions that constitute a substantial default.

(3) HUD shall determine that a PHA that has been designated as troubled and does not show substantial improvement, as defined in § 902.75(g)(2), is in substantial default.

(4) HUD may declare a substantial breach or default under the ACC, in accordance with its terms and conditions.

(5) HUD may determine that the events or conditions constituting a substantial default are limited to a